IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 7TH DECEMBER 2006 / 16TH AGRAHAYANA 1928

Crl.MC.No. 3244 of 2006()

AGAINST THE ORDER DATED / / IN LP 15/1995 IN
CP.10/1994 of JUDL. MAGISTRATE OF FIRST CLASS COURT, VARKALA
CRIME NO.133/92 OF THE VARKALA POLICE STATION.

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PETITIONER: ACCUSED 3 & 5:

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1. SIRAJ, S/O. SIDDIQUE (SIDHIQ SIRAJUDDIN)
   JAS VIHAR, ODAYAM, EDAVA, VARKALA,
   THIRUVANANTHAPURAM, NOW WORKING AT I.O.NO.8661
   OUT FITTING DEPARTMENT, POST BOX NO.8988,
   DUBAI DRY DOCKS, DUBAI, U.A.E.

2. RASHEED, S/O.MOHAMMAD KUNJU
   (MOHAMMAD KUNJU ABDUL RASHEED),JAS VIHAR,ODAYAM,
   EDAVA,VARKALA,THIRUVANANTHAPURAM,NOW WORKING AT
   BAHRAIN,P.B.NO.23486,MANAMA,BAHRAIN. PETITIONERS
   ARE REP.BY P/A.HOLDER RUKKIYA BEEVI,JAS VIHAR,
   ODAYAM, EDAVA, VARKALA, THIRUVANANTHAPURAM.

BY ADV. SRI.B.SURESH KUMAR

RESPONDENTS: STATE:

THE STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM, REPRESENTING
SUB INSPECTOR OF POLICE, VARKALA.

BY PUBLIC PROSECUTOR SRI.GIKKU JACOB.

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 07/12/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

CRL.M.C.NO. 3244 OF 2006

Dated this the 7th day of December, 2006

ORDER

The petitioners are accused 3 and 5 in a prosecution, inter alia, under Sec.436 read Sec.34 of the IPC. The alleged incident occurred as early as on 20/4/1992. Investigation was complete. Charge sheet was filed. The petitioners were not available for apprehension. A charge sheet was filed showing them as absconding. They were not available for trial. During the course of trial, the co-accused entered appearance and ultimately, the case against them ended in acquittal as per the judgment dated 31/10/95, a copy of which is produced as Annexure-A1. An appeal was preferred before this Court and this Court by Annexure-AII judgment dated 12/2/99 refused to interfere with the judgment of acquittal. Years rolled; but the petitioners did not surrender to the law. Long later, they have now come with this application in 2006. The short prayer made by them is that the prosecution against them is no more relevant or necessary; nor can it be productive. The findings entered in the judgment in the trial held against the

co-accused are relied on to contend that the prosecution will be meaningless and an absolute wastage of time of the court and the resources of the State. Certain findings entered on the basis of the evidence adduced in that trial are relied on to contend that the petitioners are entitled to have the proceedings against them quashed. The proceedings against them which were initiated taken cognizance of in C.P.No.10/94 now stands transferred to the List of Long Pending Cases and is pending as L.P.No.15/95.

2. I have heard the learned counsel for the petitioner at length. I am certainly not persuaded to invoke the inherent jurisdiction available to this Court under Sec.482 of the Cr.P.C. for various reasons.

3. First of all, no satisfactory explanation is offered as to why the petitioners did not surrender to the law for all these periods exceeding a decade. Secondly, in the light of the judgment of the Full Bench in **Moosa v. Sub Inspector of Police** (2006 (1) K.L.T. 552) the mere acquittal of the co-accused in a trial held against them when the co-accused/the petitioners were absconding on the basis of the evidence adduced in such case cannot certainly entitle the co-accused to get the proceedings against them quashed.

4. In any view of the matter, I am not persuaded to invoke the inherent jurisdiction of this Court. The practice of some accused persons keeping the law at bay leaving it to the co-accused to contest the case and take advantage of acquittal in such case has to be frowned upon. It cannot be contended that the allegations made by the prosecution, even if believed, cannot justify further proceedings. Such invocation may be justified.

5. This Crl.M.C. is, in these circumstances, dismissed.

(R. BASANT, JUDGE)

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